

PART 2 INDEPENDENT GROUPS

Chapter 12: Triad

Triad Management, Inc., is a for-profit corporation owned by Republican fundraiser Carolyn Malenick. Malenick incorporated Triad in the spring of 1996 but appears to have operated the business as an unincorporated entity since at least early 1995. Triad holds itself out as a consulting business that provides advice to conservative donors about how to maximize their political contributions. Triad oversaw advertising in 26 campaigns for the House of Representatives and three Senate races. Triad's spending may have affected the outcome of some elections. Because Triad is an unusual corporation directly involved in federal campaigns, the Committee investigated its work. Despite the refusal by Triad and its lawyers to comply fully with the Committee's subpoenas for both documents and testimony, the Minority developed substantial evidence of wrongdoing by Triad.

Based on the evidence before the Committee, we make the following findings with respect to Triad and the two non-profit organizations that it established:

FINDINGS

(1) The evidence before the Committee suggests that Triad exists for the sole purpose of influencing federal elections. Triad is not a political consulting business: it issues no invoices, charges no fees, and makes no profit. It is a corporate shell funded by a few wealthy conservative Republican activists.

(2) Triad used a variety of improper and possibly illegal tactics to help Republican candidates win election in 1996 including the following:

(A) Triad provided free services to Republican campaigns in possible violation of the federal prohibition against direct corporate contributions to candidates. These services included raising funds for candidates, providing consulting advice on fundraising and political strategy, and providing staff to assist candidates,

(B) The evidence before the Committee suggests that Triad was involved in a scheme to direct funds from supporters who could not legally give more money directly to candidates, through political action committees ("PACs"), and back to candidates. Triad obtained from Republican candidates names of supporters who had already made the maximum permissible contributions and solicited those supporters for contributions to a network of conservative PACs. In many instances, the PACs then

made contributions to the same candidates.

(C) Triad operated two non-profit organizations -- Citizens for Reform and Citizens for the Republic Education Fund -- as allegedly nonpartisan social welfare organizations under 501(c)(4) of the tax code and used these organizations to broadcast over \$3 million in televised ads on behalf of Republican candidates in 29 House and Senate races. Using these organizations as the named sponsors of the ads provided the appearance of nonpartisan sponsorship of what was in fact a partisan effort conducted by Triad. Neither organization has a staff or an office, and both are controlled by Triad. Over half of the advertising campaign was paid for and controlled by the Economic Education Trust, an organization which appears to be financed by a small number of conservative Republicans.

INTRODUCTION

Triad Management, Inc. ("Triad") is a corporation which appears to exist primarily to make contributions to conservative Republican candidates in an attempt to help them win election to Congress. Triad claims to be a legitimate business, but this is mainly so that it can evade the disclosure and contribution limits of the campaign finance laws. Triad also created and ran two other shell companies -- Citizens for Reform and Citizens for the Republic Education Fund ("Citizens for the Republic") -- for the sole purpose of funneling millions of dollars into political advertising. Even more troubling is that Triad's nonprofits were, in turn, largely funded by money from two trusts: the Personal Trust and the Economic Education Trust. The Minority believes that these two trusts were controlled by a very small number of wealthy individuals who sought to keep their identity unknown. The facts suggest that these individuals spent millions of dollars to affect over two dozen federal elections despite operating completely outside of federal election laws.

In the 1996 elections, Triad operated in 26 campaigns for the House of Representatives and three Senate races. Triad's spending alone appears to have changed the outcome of some of those elections. In Kansas, where Triad was particularly active, it may have changed the results in four of six federal races, including a Senate race where the Republican candidate received significant support from Triad.

Most disturbing, Triad is poised to become a model for future elections. A fundamental premise of the 1976 campaign law is that voters are entitled to know who is funding candidates' campaigns. As the Supreme Court noted in upholding that law: "[D]isclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributors to the light of publicity. This exposure may discourage those who would use money for improper purposes."¹ The ability of wealthy contributors to finance million-dollar advertising blitzes

without disclosing their identity to voters fundamentally undermines the spirit and letter of current campaign finance laws.

BACKGROUND

Carolyn Malenick, the sole owner of Triad, is a graduate of Jerry Falwell's Liberty University, and press reports have indicated that she has remained personally close to Falwell and his family.² Malenick appears to have spent her entire professional career in conservative Republican politics, primarily in the fundraising arena. Malenick initially worked for the "conservative direct mail king" Richard Viguerie.³ Subsequently, she raised funds for Oliver North's Freedom Alliance, a nonprofit organization founded by North in the wake of the Iran-Contra scandal that has been criticized for raising millions of dollars in undisclosed funding for North's political activities.⁴ Malenick went on to raise funds for North's losing 1994 bid for U.S. Senate.⁵ Malenick is also a member of the Council for National Policy, an organization of ultra-conservative political activists who work to further their agenda within the Republican Party.⁶

According to Malenick's public statements, she personally conceived the idea for Triad and started the business from her home, most likely in 1995.⁷ The stated purpose of Triad is to provide advice to maximize the effectiveness of contributions from conservatives.⁸ In 1996, Malenick incorporated Triad and established an office on Capitol Hill.⁹ Triad is ostensibly a political consulting firm that simply works for contributors rather than candidates. Purportedly, Triad generates income from yearly subscription fees for a fax service, percentage fees for contributions made at Triad's advice, and management fees for overseeing the two nonprofits it created, Citizens for Reform and Citizens for the Republic.¹⁰ Triad then employs consultants to determine which candidates have the best chance of winning and are thus deserving of financial support from Triad's clients.¹¹

THE COMMITTEE'S INVESTIGATION OF TRIAD

On April 9, 1997, the Committee initiated its investigation of Triad and its linked entities, Citizens for Reform and Citizens for the Republic, by issuing subpoenas requiring production of documents to the Committee. Virtually no substantive documents were produced for three months, until July. Further, documents which would ordinarily be retained in the course of business, including scripts and invoices for advertising by one of the nonprofit shells, were not produced and appear not to exist. A February 22, 1997, memo from Malenick to her employees refers to the completion of the "cleaning" of computer hard drives.¹² The memo is dated less than two weeks prior to publication of a Washington Post article on the subject of Triad and the shell companies.¹³

After delays in document production and protracted refusals to consent to voluntary interviews or depositions, on July 11, Chairman Thompson signed deposition subpoenas for 11 individuals associated with Triad.¹⁴ On September 8, after only two-and-a-half depositions of people with knowledge of the events under investigation had been completed, the Committee received a letter from Triad's counsel.¹⁵ He wrote: "[f]rom press accounts, our clients have been

substantially more cooperative than other organizations. Accordingly, we will not permit additional depositions. . .”¹⁶ Not only was the assertion of cooperation dubious at best, but counsel set forth no valid basis for Triad’s obstruction. In a traditional litigation setting, such a refusal to appear and answer pursuant to subpoena would likely result in a finding of contempt and sanctions against these individuals.¹⁷

At the time Triad employees and consultants defied the personal subpoenas issued by the Committee, ten individuals -- including all senior-level decision-makers -- were under personal subpoenas to appear and answer questions. Also refusing to appear for deposition was Triad attorney Mark Braden. Braden is a former general counsel to the Republican National Committee who advised Triad throughout the period in which it carried out many of its apparently illegal activities. Although three individuals subsequently appeared for deposition, none answered any substantive questions. Carolyn Malenick herself, for example, eventually appeared for deposition and then refused to answer any substantive questions posed by Committee staff.¹⁸ Prior to the blanket refusal to appear, the Committee had already established that Triad had made significant corporate contributions to Republican candidates; found evidence of illegal earmarking of political action committee contributions; found evidence that Triad coordinated its advertising campaign with Republican candidates; and found evidence that the nonprofit shells had no independent existence apart from Triad.

Malenick and her backers and associates joined officials from the RNC and other pro-Republican groups as the only individuals to blatantly defy deposition subpoenas issued by the Committee. No individuals associated with Democratic entities who received personal subpoenas to appear before this Committee and answer questions either refused entirely to appear, or issued a blanket refusal to answer.¹⁹ Yet, no order was ever issued to enforce the subpoenas or to hold Triad, its employees, officers, and directors in contempt of the Senate.

Not only were the Committee’s subpoenas not enforced, the Majority reneged on its commitment to allow three days of hearing time on the subject of abuses by Republican organizations, including Triad, despite overwhelming evidence that these groups had engaged in improper, and likely illegal, conduct. Further, in possibly the most telling failure of this investigation, no subpoena was issued for records of the Economic Education Trust, a secret entity that provided over half of the funding for Triad’s advertising campaign. As a result, the identity of the figures behind the Economic Education Trust and the amount of money they spent funding secret advertising campaigns through groups like Triad in the 1996 election remains unconfirmed.

Two Republican members of the Senate had links to Triad. One Senator received the benefit of more Triad advertising dollars than any other candidate in 1996. He also had several meetings with Malenick and Triad staff, and his campaign was involved in receipt of PAC contributions involving Triad. Another Senator appeared in a Triad marketing video that was intended to help Triad raise funds for federal candidates. The video was filmed in his Senate office, possibly violating prohibitions on the use of Senate offices for fundraising and commercial purposes. In late 1997, a spokesman for that Senator said the video was a mistake.²⁰

Despite the obstruction by Triad and its lawyers, and despite the lack of enforcement by the Committee, the Minority developed substantial evidence of wrongdoing by Triad and its nonprofit shell organizations. The evidence shows that Triad carried out an audacious plan to pour millions of dollars in contributions into Republican campaigns nationwide without disclosing the amount or source of those contributions.

THE POLITICAL OPERATION OF TRIAD MANAGEMENT

Triad is Not a Business

The Committee's investigation has shown that Triad is not a business in the conventional sense, because it charges no fees and generates no profit. Triad did not produce a single client bill or invoice to the Committee, nor were any marketing materials produced which mentioned fees or discussed a fee structure.²¹ Neither the bookkeeper nor the finance director of Triad could tell the Committee how Triad billed its clients. While Triad finance director Meredith O'Rourke recalled seeing a sheet of paper with a fee structure on it, she could not recall if fees were paid on a monthly, weekly, or yearly basis.²² She could not explain how fees were calculated and could only say that clients were paying for "advice" but could not recall the "specifics" of it.²³ Triad bookkeeper Anna Evans, when asked about the fee structure, said she could not state how clients were billed or on what basis. Asked about whether clients were billed for travel by Triad staff, she responded, "I'm not involved in agreements that are reached between Carolyn and the clients."²⁴

In telephone interviews, a number of people who confirmed that they contributed to PACs at the advice of Triad made no mention of paying fees.²⁵ At least one individual, Floyd Coates, stated that he did not pay Triad for the contribution advice he received.²⁶ Another person who made contributions at Triad's advice stated he had learned of Triad from his friend Robert Cone and that he regarded Malenick as the organization's executive secretary.²⁷

Robert Cone's Financial Support of Triad

The evidence shows that at least through the second half of 1995, and into 1996, Triad was largely a vehicle for a single conservative activist, Robert Cone. According to Triad bookkeeper Evans, money was given to Triad from a single principal donor "so it could proceed with its work."²⁸ Bank records show that between June 1995 and January 1996, Triad received a total of \$196,000 in deposits.²⁹ Of this total, Cone provided \$175,000, or 89 percent of Triad's funding.³⁰ Through the end of 1995, Cone's payments were made in increments of approximately \$25,000 per month.³¹ During this period, Triad received only \$1,376 from sources other than Cone or fellow conservative Lorena Jaeb.³² Between January and September 1996, Triad received a total of \$1.1 million. Of this amount, at least \$150,000 was received from Robert Cone, while \$900,000 was received from unknown sources in wire transfers of \$50,000 or more. Only \$17,000 is known to have come from non-Cone sources.³³ The total amounts received by Triad from Cone may be even larger. Asked to estimate the cumulative amounts received from its

principal donor, Triad bookkeeper Evans estimated that Triad had received between \$600,000 and \$700,000 from this source, while one of the two nonprofits received \$900,000, and the other received between \$400,000 and \$500,000.³⁴

Cone, a businessman based in Elverson, Pennsylvania, is a well known social conservative who backs anti-abortion causes.³⁵ However, it was not until the last few years that he began devoting large sums of money to political causes. Cone, who together with his brother, Edward, formerly owned Graco Children's Products, initially made political contributions to a number of candidates who supported tort reform shortly after Graco was sued in a series of product liability cases.³⁶ In 1996, Cone created a state-level political action committee in Pennsylvania, which has come under media scrutiny because he is the committee's only contributor.³⁷ It was reported as early as October 1996 that Cone along with Malenick visited staff in a Republican Senator's office to promote Triad.³⁸ Cone also appears in Triad's marketing video and attended a presentation of the results of a national poll commissioned by Triad he attended.³⁹

While Triad holds itself out as a for-profit consulting business, the evidence before the Committee indicates that it charges no fees and is primarily funded by Cone. As discussed below, Triad's business activities were confined to activities designed to affect the outcome of federal elections.⁴⁰ In effect, Cone used Triad as a vehicle to provide in-kind contributions to Republican candidates nationwide, contributions that in many instances he would have been prohibited from making himself, as he had already reached his personal annual contribution limit with contributions to PACs and to individual candidates.⁴¹ Because Triad's sole purpose is to influence the election of conservative Republican candidates, legally it should publicly disclose its activity to the Federal Election Commission, like any other political party or political action committee that exists to influence federal elections.⁴²

Corporate Contributions by Triad

As a corporation, Triad is prohibited from making contributions to the campaigns of political candidates.⁴³ When providing services to campaigns, corporations such as Triad are required to charge commercially reasonable rates. Any failure to charge such market rates can result in the services being deemed illegal "in-kind" corporate campaign contributions.⁴⁴ Triad, generously funded by Cone and others, apparently never charged fees. Instead, Triad provided political consulting services to numerous Republican campaigns free of charge. Triad raised funds for candidates from PACs and from individuals and advised candidates on fundraising and on matters of political strategy, often sending consultants to meet with candidates and observe the campaign structure. These free services would appear to constitute illegal corporate contributions from Triad to the campaigns.

While Triad publicly claimed to act as a consultant only to contributors, its activities were, in fact, more broadly based. From Triad's offices, Malenick provided advice to candidates on subjects as varied as raising funds from PACs, to where to live if elected.⁴⁵ Triad finance director Meredith O'Rourke, who was based in Triad's Washington office throughout 1996 and shared an office with Malenick, testified that Malenick spoke to dozens of Republican candidates in 1996

and that she herself frequently spoke to candidates about fundraising, polling, and how their campaigns were going in general.⁴⁶ Robert Riley, Jr., son of a successful candidate for the House of Representatives in 1996, told a Committee investigator that he was initially put in touch with Malenick as a person who could secure financial support from PACs for his father.⁴⁷ Representative John Thune of South Dakota, when asked about Malenick's receipt of a check from his campaign committee, explained that he had traveled to Washington, and Malenick had spent a couple of days showing him around and introducing him to people.⁴⁸

Triad also made in-kind contributions to candidates in the form of advice from experienced political consultant Carlos Rodriguez. Prior to becoming a consultant for Triad, Rodriguez was known primarily for his work on behalf of California Republicans. In one incident, while he was working for Republican State Assembly candidate Curt Pringle, he was reportedly responsible for posting uniformed guards outside Orange County, California, polling places to discourage Latino voters.⁴⁹ Through November 1996, Rodriguez traveled the country assessing the chances of various conservative Republican candidates and offering advice to candidates and campaigns along the way. Paid \$20,000 a month by Triad, Rodriguez wrote reports of his visits to at least 53 congressional districts and campaigns.⁵⁰ At the same time, Rodriguez advised the campaigns on issues from the hiring of particular consultants, to the utility of phone banks, to the effectiveness of advertising, and how to develop fundraising plans.⁵¹ The assessments performed by Rodriguez also document the high level of personal contact between candidates and Triad. Many reports indicate a personal meeting with the candidate, or, at a minimum, a meeting with senior campaign staff. Many reports were also executed just prior to the final decision-making period on advertising buys in September and early October. In addition to these visits, according to Triad's attorneys, Triad may have actually funded visits to as many as 250 Republican campaigns during 1996.⁵² Thus, there is no doubt that candidates were aware of Triad's activities, and in most cases at least appear to have welcomed the activity.

The ostensible purpose of the Triad campaign site visits was for Triad to assess each candidate's viability and thus determine if the campaign was deserving of Triad-generated financial support. Triad also used the site visits as occasions to give strategic advice on such issues as selection of vendors, and advisability of polling, mailings, and phone banks.

For example, Rodriguez strongly encouraged the campaign of Jay Mathis, a House candidate in Texas, to engage a phone bank operation.⁵³ Another site visit report by Rodriguez described the particulars of his campaign-consulting activities: "I gave them a plan to work out with regards to fundraising, establishing specific goals and programs to meet those objectives."⁵⁴ In the case of Christian Leinbach, a House candidate from a Pennsylvania district near Robert Cone, Rodriguez wrote: "I have suggested to Christian Leinbach specific steps that need to be taken regarding his fundraising. I have asked the campaign chairman to inform me if Christian Leinbach does what he has been told he needs to do."⁵⁵

In other instances, Rodriguez advised campaigns to hire vendors with whom Triad, or at least Rodriguez, already had relationships. For example, in the report on Jim Ryun, a House candidate in Kansas, Rodriguez wrote that the bad points about the campaign included the lack of

a campaign structure. He noted that he had recommended Chris Wilson of Fabrizio & McLaughlin as “they are already doing Snowbarger next door and Todd Tiahrt’s reelect and as such have a good knowledge of the state.”⁵⁶ Fabrizio and McLaughlin also worked directly for Triad in 1996 and had previously worked with Rodriguez on the 1994 campaign of Indiana Representative David McIntosh.⁵⁷ Wilson was also Rodriguez’s choice for Steve Stockman’s House campaign in Texas: “Should [the existing pollster] not be ready to go into the field, I have suggested in very strong terms to Steve Stockman that he consider replacing [him] with Chris Wilson from Fabrizio McLaughlin who has intimate knowledge of Texas and Stockman’s own district.”⁵⁸ For House candidate Mark Sharpe of Florida, Rodriguez recommended his own former partner David Gilliard as a paid consultant: “In addition I recommended . . . that Gilliard do their advocacy direct mail to add punch to their campaign.”⁵⁹

Triad also provided staff to assist directly at least one candidate in raising funds. O’Rourke testified that on two occasions she went to the National Republican Congressional Committee to assist a member of the House of Representatives who was a candidate for the Senate in “dialing for dollars.”⁶⁰ Although Triad counsel Mark Braden has publicly insisted that O’Rourke was not acting as an employee of Triad when she assisted that candidate,⁶¹ O’Rourke (with Braden present) testified that Malenick arranged her initial meeting with that candidate:

Q: The first time you met with [the Senate candidate] was at the NRCC and I think you said Carolyn [Malenick] had set it up, is that correct?

A: Correct.⁶²

In addition to providing advice and fundraising assistance to candidates, Triad worked to raise funds for individual candidates.⁶³ One common means that Triad used to solicit contributions was a sophisticated system of fax messaging that could simultaneously send information to many persons. The faxes, written by Malenick, were sent to conservative Republicans and contained general information on a number of campaigns. Triad also used its fax system to urge support or defeat for particular candidates. For example, a November 15 fax discussing run-off elections exhorts: “Stockman needs our help and we must answer the call.”⁶⁴ A July 18 fax, sent just before the Kansas primary, claims: “The election of Brownback will send shock waves through the Republican national convention! Sheila Frahm must be defeated.”⁶⁵ By expressly advocating the election and defeat of candidates, these faxes by Triad appear to be illegal corporate contributions to the campaigns.⁶⁶ While no witness could tell the Committee how many people received the faxes, one fax alert notes that “over 160 businessmen and women have been added to the Fax Alert in the last 18 months.”⁶⁷ In one fax sent shortly before the November 5 election, entitled “TOP TIER RACES IN NEED OF CASH \$\$,” Triad solicited contributions for 26 candidates.⁶⁸ Of the 26 candidates, 19 also benefitted from advertising, mail, or telephone attacks on their opponents from Triad’s affiliated organizations, Citizens for Reform or Citizens for the Republic. Essentially, Triad acted as a volunteer fundraising consultant for Republican campaigns, illegally facilitating contributions to the candidates.⁶⁹

These services--the solicitation of contributions, visits to and assessment of campaigns,

general advice, introductions to PAC funding sources, and express advocacy on behalf of specific candidates--summarize the day-to-day activities of Triad up to September 1996. While these activities do not significantly differ from the day-to-day business of other political consultants, Triad's activities are fundamentally problematic because Triad was not paid by the candidates but was largely financed by a single individual. Triad's activities, therefore, appear to have constituted illegal corporate contributions from Triad to the candidates it assisted.

Triad and Political Action Committees

Triad also worked to generate contributions to conservative political action committees. Moreover, PACs for which Triad solicited contributions frequently gave to candidates who had received contributions from the same PAC contributors. If these contributions were merely coincidental, no violation of federal law occurred. However, if either the contributor or Triad suggested or implied to anyone at the PAC that contributions should be made to a particular candidate, and the contributor had also made the maximum contribution to the candidate, the contribution is considered illegally "earmarked."⁷⁰

The pattern of candidate contributions made by PACs receiving Triad-solicited contributions suggests that earmarking did occur. An examination of the public records of approximately ten conservative political action committees shows that on a number of occasions multiple PACs received checks from the same individual within a matter of days. All of the PACs receiving the contributions then made contributions to one candidate within days of one another. In most cases the individual contributor had already made the maximum permissible contribution ("maxed-out") to the candidate benefitting from the PAC contribution.

One example of this pattern is the contribution of Robert Riley, Jr., an Alabama lawyer and the son of congressional candidate Robert Riley. Between May 9 and May 23, 1996, Riley, Jr. made four contributions to PACs, which appear on an internal Triad PAC list.⁷¹ Between May 23 and May 29, the same four PACs made contributions to the Riley campaign, two of the PACs within 48 hours of reporting receipt of the Riley contribution.⁷² On June 4, Riley, Sr. won the Republican primary. On November 14, the newly elected Representative Riley was quoted in a Triad fax stating, "Triad came to our aid in crucial times when we were desperately in need of funds."⁷³

Another series of contributions was made by John and Ruth Stauffer. Between July 5 and July 29, the Stauffers made contributions to seven PACs. Between July 12 and July 29, all seven PACs contributed to the Senatorial campaign of the Stauffer's son-in-law. At least one of the checks delivered stated, "c/o Triad."⁷⁴ Shortly after winning the August 6 primary, the same candidate sent Triad a personally signed thank-you note which read, "I cannot even begin to thank Triad enough for its help in my Senate primary campaign."⁷⁵

In her deposition, O'Rourke confirmed that Triad was in regular contact with individuals who worked for the PACs receiving the Riley and Stauffer contributions. O'Rourke testified that either she or Malenick was in contact with people at the Faith Family and Freedom PAC, the

Conservative Victory Committee, the Eagle Forum, the Conservative Campaign Fund, Citizens United, the Republican National Coalition for Life, the Madison Project, and the Sacramento-based Citizens Allied for Free Enterprise and Americans for Free Enterprise.⁷⁶

Malenick had long-term relationships with many of the people in charge of making the PACs' contributions. Peter Flaherty, who is responsible for making contributions for the Conservative Campaign Fund, testified that he had known Malenick for a number of years.⁷⁷ The relationship with Flaherty is particularly important as he not only oversees the Conservative Campaign Fund, which made a number of questionable contributions, but also acts as spokesperson for one of the nonprofit organizations created by Triad, Citizens for Reform.⁷⁸ David Gilliard, the contact for Citizens Allied for Free Enterprise, is also a director of the second Triad shell, Citizens for the Republic.⁷⁹ In addition, Gilliard produced mailings for Citizens for Reform and is the former business partner of Carlos Rodriguez.⁸⁰ Rodriguez himself worked for the 1994 election campaign of Representative David McIntosh, who is associated with the Faith, Family and Freedom PAC.⁸¹ All of the PACs identified above as well as additional political action committees implicated in patterns of suspicious contributions appear on an internal Triad list along with names and telephone numbers of contacts at each organization.⁸²

The Committee found evidence that Triad was involved in each step of the contribution process, from the time a PAC contribution was solicited from a contributor to the time the PAC contributed to a candidate. Robert Riley, Jr. told a Committee investigator that he made his contributions on the advice of Malenick and that Malenick had held the checks for a period of time before they were cashed by the PACs.⁸³ Riley also told the agent that when the campaign received the contributions from the PACs, the checks were received not from the PACs themselves, but from Triad.⁸⁴ O'Rourke confirmed that, on occasion, she personally delivered checks to PACs; that she always called a PAC to let it know that a Triad-solicited check would be arriving; and that as a general matter people at the PACs knew when checks they received were the result of Triad involvement.⁸⁵

Documents produced to the Committee, along with the testimony of O'Rourke, also established that Triad had a regular pattern of soliciting Republican candidates for names of their supporters who had already contributed the maximum amounts to their campaigns permitted by law, so that the supporters could be solicited by Triad for PAC contributions. O'Rourke confirmed that, on multiple occasions, she solicited names from Republican candidates and campaign staff of supporters who might be good "potential Triad clients."⁸⁶ Candidates who provided names of such potential contributors included the Senate candidate who received contributions from the Stauffers, Representative Riley, and Representative Gutknecht.⁸⁷ Carlos Rodriguez's reports also reflect this pattern. In the campaign report of Texas House candidate Pete Sessions, Rodriguez states: "[b]oth Sessions and [the campaign manager] clearly understood the Triad concept and will have a list of their maxed out donors for our inspection as soon as there is a call from Washington."⁸⁸ In another Texas campaign report, Rodriguez notes, "Ed Merritt has a number of maxed out donors who might want to be introduced to Triad. Towards that end, I have recommended over the telephone to Meredith O'Rourke that we check their receptance."⁸⁹

Triad's pattern of soliciting candidates for the names of maxed-out contributors was so well-established that Triad used standard "phrases" approved by counsel. A June 13, 1996, memo from O'Rourke to Triad counsel Mark Braden queries, "Is this phrase okay for candidates to use to refer potential clients to Triad? 'There is a business in Washington -- whose clients are donors to conservative causes and campaigns. Call them.'"⁹⁰ Handwriting in the top corner of the memo indicates that on June 13 "Braden OK'd quotes."⁹¹ Reports of visits to the campaigns by Rodriguez also routinely note that O'Rourke should get in touch with the campaign staffer in charge of fundraising after his visit. For example, in the report on the Rick Hill campaign for the House in Montana, Rodriguez notes, "I have advised Betty Hill (the wife of the candidate and an accomplished campaigner herself) that she should be receiving a call from Meredith [O'Rourke] in the days to come to discuss possible Triad clients [who] might be able to help."⁹²

The public disclosure records of the PACs that appear on Triad's internal list also indicate that Triad's network of contributors had relationships with one another and with Malenick through membership in the Council for National Policy. For example, the public records for a Sacramento-based PAC, Citizens Allied for Free Enterprise, which is administered by David Gilliard, show a number of contributions by Council for National Policy Members.⁹³ The PAC, established in November 1995, received a total of 21 contributions. Nine contributors were members of Robert Cone's family, while four additional contributors were, like Cone and Malenick, members of the Council for National Policy.⁹⁴

Besides the Riley and Stauffer incidents, other contribution records reveal a pattern whereby contributions found their way from supporters of particular candidates through PACs associated with Triad to the candidates the contributors supported. The records show:

- O Steve Stockman received three \$5,000 contributions from PACs on Triad's internal list. All three PACs received \$5,000 contributions from Richard Eckburg. Eckburg also made a \$1,000 contribution to Stockman.⁹⁵
- O Foster Freiss of Wyoming made a \$4,000 contribution to Peter Flaherty's Conservative Campaign Fund on November 1, 1996. On the same day, the Conservative Campaign Fund made a \$4,000 contribution to Ray Clatworthy, a Senate candidate in Delaware. The Conservative Campaign Fund made no other contributions in the amount of \$4,000. Freiss also contributed directly to Clatworthy. On October 31, Freiss made a \$25,000 contribution to Citizens for Reform, for which Flaherty was spokesman. Citizens for Reform spent \$18,000 on advertising for Clatworthy.⁹⁶
- O Peter Cloeren of Orange, Texas, made a contribution to Texas House candidate Brian Babin in September 1996. On October 14, Cloeren made a \$5,000 contribution to Citizens United. On the same day, Citizens United made a \$5,000 contribution to Babin. On October 1, Cloeren made a \$20,000 contribution to Triad-affiliated Citizens for Reform. Citizens for Reform spent an unknown amount on television commercials attacking Babin opponent Jim Turner.⁹⁷

- O Lorena Jaeb of Florida contributed \$20,000 to Triad in 1995. On April 22, 1996, she made a contribution of \$2,500 to Citizens United. On April 28, Citizens United made a \$2,500 contribution to Representative J.C. Watts of Oklahoma. Jaeb also made a \$1,000 contribution to the Watts campaign. Representative Watts was quoted in a Triad fax stating, "My thanks to TRIAD's clients who had the backbone to answer the call -- putting their money where their mouths were. . ."⁹⁸

Meredith O'Rourke and Peter Flaherty, the only individuals with knowledge who answered any substantive questions in deposition, refused to answer questions on the subject of specific PAC contributions. Asked about the Riley contributions, O'Rourke responded, "I don't think I want to answer that question." Triad counsel Mark Braden then added, "No, we're not going to answer any questions in regards to Bob Riley, Jr."⁹⁹ Asked whether any "clients" of Triad made contributions to Riley's PAC, the Conservative Campaign Fund, Flaherty responded, "It's none of your business."¹⁰⁰ While a spokesperson for another candidate has insisted that O'Rourke obtained names from that candidate's public FEC reports, O'Rourke testified that she received the names directly from a campaign staff member.¹⁰¹ Asked about the Stauffers, O'Rourke confirmed that she knew them, but when asked if she had gotten their names from a specific Senate candidate, she was instructed by her attorney, Mark Braden, not to answer.¹⁰² Among the questions that Malenick refused to answer was, "Did Triad ever make suggestions to any political action committee relating to the candidates that the committee intended to contribute to?"¹⁰³

Triad has tried to make the case publicly that these situations are simply coincidences that occur in any campaign where a candidate receives funds from individuals and PACs with similar ideology. However, the Committee is aware of no other situation where an entity acted as an intermediary, soliciting candidates for potential contributors, and directing the flow of the contributions from contributors to multiple PACs on the one hand, while being involved in the subsequent distribution of the PAC funds on the other. It strains credulity that Malenick repeatedly accomplished each of these steps without ever implying to the candidate, the contributor, or the PAC representative that a particular candidate might be a good selection for a particular PAC contribution. While, according to Robert Riley, Jr., Malenick told him she could not guarantee that his father would benefit from his PAC contributions, evidence gathered by the Committee strongly suggests that Malenick made implied representations that particular contributions should go to particular candidates, thus illegally earmarking contributions for particular candidates.¹⁰⁴

THE ADVERTISING CAMPAIGN

The primary means by which Triad assisted in the election of conservative candidates was by overseeing millions of dollars' worth of advertising placed by two nonprofit organizations, Citizens for Reform and Citizens for the Republic. The advertising funded through these groups cost between \$3 and \$4 million and aired in 26 House and three Senate races.¹⁰⁵ The sole purpose of the advertising was to influence voters in favor of conservative Republican candidates in those

racess.

Creation of Citizens for Reform and Citizens for the Republic

Like other organizations that aired advertising in the 1996 campaign, Triad took advantage of a series of court cases decided as recently as 1996. The cases hold that if a political advertisement or other communication (such as a mailing or telephone call) is paid for by an individual or corporation that is not a candidate or a political party, and the advertisement does not use words that expressly advocate the election or defeat of a candidate (such as “vote for,” “elect,” or “defeat”), then the advertiser is exempt from the campaign-finance laws.¹⁰⁶ The ad may be paid for with corporate or union funds, and neither the source of the funds nor the cost of the advertisement need be publicly disclosed. However, if groups preparing such advertising campaigns consult with or collude with candidates or campaigns, then the cost of the advertisements will be viewed as a contribution from the organization to the campaign.¹⁰⁷

In the 1996 election cycle, the use of “issue advocacy” advertising exploded, and many groups began airing advertisements that were unmistakably political advertising clearly favoring one candidate over another and intending to influence the views of potential voters.¹⁰⁸ The majority of groups that aired such advertisements, produced mailings, and made telephone calls in 1996 were well-established membership organizations committed to particular issues. Such groups included the AFL-CIO, the U.S. Chamber of Commerce, the Christian Coalition, and the Sierra Club.

In contrast to these groups, Triad conceived of the idea, apparently in early 1996, of creating two nonprofit corporations -- Citizens for Reform and Citizens for the Republic -- solely for the purpose of airing advertisements without disclosing their sources of funding. The two groups were incorporated on May 5 and June 20, 1996, respectively, within weeks of Triad itself.¹⁰⁹ In post-election marketing material, Citizens for the Republic boasted that it had “no endowed chairs, no fellowship programs, no committees and no departments.”¹¹⁰ In fact, neither Citizens for Reform nor Citizens for the Republic had committees, programs, or chairs. They had no chairs of any sort, nor desks, offices, staff, or even telephones. Instead, Citizens for Reform and Citizens for the Republic each consists of a set of articles of incorporation, a post office box, and a bank account. Neither organization has ever engaged in any service or activity other than paying for the production and airing of political advertising. They are justifiably characterized as shell companies created as mechanisms for funding million-dollar political advertising campaigns and to create of a patina of credibility for the advertisements.

In 1996, both Citizens for Reform and Citizens for the Republic claimed to be tax-exempt “social welfare organizations” pursuant to section 501(c)(4) of the U.S. tax code, with a public purpose: respectively, to “develop greater participation on a non-partisan basis, in the debate on the size, scope, growth and responsibility of government” and to focus on “public policy issues concerning the American worker.” Despite holding themselves out as social welfare organizations throughout the election, and despite the fact that Citizens for the Republic obtained IRS approval, both organizations apparently now have conceded that they do not fit the

requirements of section 501(c)(4) status but are instead political organizations governed by section 527, the same IRS section that applies to the Democratic National Committee and the Republican National Committee.¹¹¹ While a 501(c)(4) organization may lobby and may even engage in campaign activities, such activities may not be the primary activity of the organization. Yet, campaign activity was not just the primary but the exclusive activity of both Citizens for Reform and Citizens for the Republic. While counsel Mark Braden claimed that the change of tax status was “just a question of what forms you file,” in fact Citizens for Reform and Citizens for the Republic have conceded that they exist to influence the outcome of elections, coming perilously close to an admission that they are subject to the disclosure requirements and contribution limits of the campaign-finance laws.¹¹²

Carolyn Malenick has insisted that Citizens for Reform and Citizens for the Republic are independent organizations that Triad simply “manages.” In fact, the organizations were created at Malenick’s instigation and have always essentially been run by Triad. In his deposition, Citizens for Reform director Peter Flaherty was able to recall that he discussed the creation of a nonprofit organization with Malenick between one and ten times prior to incorporating Citizens for Reform, but he insisted he could not recall any single discussion or the specifics of any discussion.¹¹³ Triad’s role in the creation of Citizens for the Republic is even more clear, in that it was incorporated by Triad’s law firm, and Rodriguez, Malenick, and O’Rourke were all appointed as either officers or directors of the organization.¹¹⁴

Triad was also responsible for all financial arrangements of both organizations from their creation. In July 1996, Citizens for the Republic paid for a series of “test advertisements” in a variety of congressional districts. All funding for this campaign originated with Triad, which simply made transfers into Citizens for the Republic’s bank account.¹¹⁵ In fact, while Flaherty insisted under oath that he signed all checks for Citizens for Reform, bank records show that financial transactions for both Citizens for Reform and Citizens for the Republic consisted only of wire transfers that were handled exclusively by Triad bookkeeper Anna Evans.¹¹⁶

On September 27, 1996, six weeks prior to the election, Malenick on behalf of Triad entered into a formal consulting agreement with both Citizens for Reform and Citizens for the Republic. The consulting agreements granted to Triad carte blanche authority to act on behalf of both organizations. The agreements gave all authority for decision-making and hiring of consultants to Triad -- destroying any semblance of separation between Triad and the two other organizations. The consulting agreements read in part:

TRIAD will be free to decide the means by which it will provide the Services. To the extent that TRIAD requires assistance in providing the Services, it shall be responsible for hiring the necessary individuals or firms. All work done by TRIAD and its agents servants and employees and all employment and other contracts made by TRIAD in the performance of this agreement shall be as principal and not as agent of [either organization].”¹¹⁷

Prior to execution of its agreement, Citizens for Reform did not even have a bank account. Yet,

between the time an account was opened on October 11 and the November 5 election, Citizens for Reform received 12 deposits totaling \$ 1.79 million.¹¹⁸ Of these funds, \$1.69 million was spent by November 7.¹¹⁹ Between October 1 and November 15, Citizens for the Republic received eight deposits totaling \$1.84 million while spending \$1.68 million.¹²⁰ Funds were also freely transferred between accounts held by Citizens for Reform, Citizens for the Republic, and Triad.¹²¹ In December 1996, Citizens for Reform received \$127 in deposits and spent only \$17.¹²²

While Citizens for Reform and Citizens for the Republic each had a spokesperson, neither person appears to have played a substantive role in the advertising campaign. Lyn Nofziger, spokesperson and director of Citizens for the Republic, refused to answer questions at his deposition but has stated publicly that “Malenick handled most of the work.”¹²³ This statement is certainly supported by the documents produced to the Committee, since Nofziger’s name appears on only official documents bearing his signature, talking points for a single meeting, and his letter of resignation dated April 3, 1997, one week prior to the issuance of subpoenas by this Committee.¹²⁴ Peter Flaherty confirmed that, despite his title as director, he viewed Malenick as the person in charge of fundraising, retaining vendors, and deciding on the content and placement of advertising for Citizens for Reform.¹²⁵

The fact that the Citizens for Reform and Citizens for the Republic advertising was financed by so few deposits so close to the election suggests that a handful of wealthy contributors were financing the huge political advertising campaign. The creation of the companies allowed these contributors to contribute enormous sums of money without public disclosure. Contributors were also free to use corporate funds, which they could not otherwise legally contribute to candidates. Besides protection from disclosure, the Triad companies also offered contributors another huge advantage: control of the substance, timing, and location of advertising. Triad essentially allowed contributors to launder funds through these entities for their own political purposes.

Improper Coordination of Triad’s Advertising with Political Candidates

Citizens for Reform and Citizens for the Republic spent a combined total of between \$3 million and \$4 million on advertising in 29 races.¹²⁶ The total amount remains unknown, because the documents produced to the Committee contain inexplicable gaps. It appears that Citizens for Reform and Citizens for the Republic spent money for television, radio, mail, and telephone calls in three Senate and 26 House races. The Senate races were in Kansas, Arkansas, and Delaware, while House races included four in Texas, three in Kansas, three in California, two each in Pennsylvania and Oklahoma, and one each in Minnesota, Hawaii, Montana, South Dakota, Washington, Oregon, Ohio, Illinois, Tennessee, Arkansas, New York, and North Carolina. Of the 29 Republican candidates who benefitted from advertising “managed” by Triad, 22 are known to have received campaign visits from Carlos Rodriguez, while at least three others spoke personally to Malenick.¹²⁷

Like other groups running so-called issue advertisements in the 1996 campaign, Triad carefully avoided the words “vote for,” “support,” or “defeat,” in the advertisements it funded,

but otherwise attacked the positions, ideology, and, frequently, the character of candidates. The advertising created by Triad focused on no single set of issues. It more closely resembled negative attack advertising aired by an opposing candidate. The candidates benefitting from the advertising were the same candidates for whom Triad had solicited contributions and advised on campaign and fundraising strategy.

When a candidate and an organization exchange information, and the organization subsequently spends funds to encourage voters to support the candidate, it raises questions about whether the expenditures were undertaken in coordination with the candidate, thereby making the advertising expenditures a disguised contribution to the campaign. One court has said that organizations may legally have contact with candidates, but noted that the level of contact and coordination was important and that the “government has an interest in unearthing disguised contributions,” and “the FEC is free to investigate any instance in which it thinks the inquiry (between representatives of a corporation and a campaign) has become collaboration.”¹²⁸ The Committee’s investigation of Triad has shown that representatives of Triad and its shell corporations had contact with the campaigns that went far beyond the making of inquiries, and that Triad and campaign representatives collaborated on plans, strategies, and the needs of the campaigns. Both the content of the advertising and the determination of where to air advertising was clearly influenced by Rodriguez’s conversations with the candidates and the campaigns.

For example, Rodriguez visited the campaign of Rick Hill, a Republican running against Democrat Bill Yellowtail for Montana’s at-large seat in the House of Representatives. In a report dated September 24, 1996, Rodriguez wrote that the number-one item the Hill campaign needs is a “3rd party to ‘expose’ Yellowtail.”¹²⁹ Rodriguez also noted that three “key issues -- anti Yellowtail” are “wife beating,” “robbery of camera store in college,” and Yellowtail’s record as a “deadbeat dad.”¹³⁰

On October 22, Citizens for Reform commenced a \$109,500 television advertising campaign attacking Yellowtail.¹³¹ The television advertisement exactly followed the issues laid out in Rodriguez’s report, with the announcer intoning:

Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail’s response? He only slapped her. But ‘her nose was not broken.’ He talks law and order . . . but is himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments -- then voted against child support enforcement. Call Bill Yellowtail. Tell him to support family values.¹³²

Although polling in September showed Yellowtail ahead by three points, on November 5, Rick Hill won by a margin of 52 to 43.¹³³

In other cases Rodriguez made no secret of the fact that he was using information gained in the audits to determine where Triad would run advertising and what it would say. On September 25, after visiting the South Dakota campaign of Republican House candidate John

Thune, Rodriguez wrote, “This campaign is well on its way to winning. If there is anything we can do to help it would probably be in the area of 501(c)(4) education with regards to the liberal tendencies of his opponent.”¹³⁴ The report also noted Democrat Steve Weiland’s “union ties” as a key issue in the race.¹³⁵ Citizens for Reform subsequently spent \$21,000 on television advertisements focusing on Weiland’s support for organized labor.¹³⁶

On September 3, Rodriguez noted in a report on the Texas campaign of Steve Stockman: “. . . we ought to place Steve Stockman among the top ten races for TRIAD to watch. We should also give some very serious thought to the possibility of engaging in an educational effort to bring into focus what Steve Stockman has done for the district and to expose some of the shortcomings that his Democratic opponent brings to this campaign.”¹³⁷ In the two weeks before the election, both Citizens for Reform and Citizens for the Republic aired advertisements totaling \$142,000 attacking Stockman opponent Nick Lampson.¹³⁸ One advertisement stated:

Can we trust Nick Lampson? As Jefferson County tax assessor, Lampson was criticized as inefficient and disorganized by the county auditor. . . . And the Houston Chronicle reported that Lampson was accused of Medicare fraud by a home health care worker from his family business. Call and tell Nick Lampson to support ethics in government.¹³⁹

Other excerpts from Rodriguez’s reports demonstrate how Triad’s extreme conservatism led it to spend money to target even moderate Republicans. For example, Sue Wittig, who ran against Representative Maurice Hinchey in New York state during the Republican primary, benefitted from \$111,000 in television and radio advertising placed by Triad through Citizens for Reform.¹⁴⁰ On September 29 Rodriguez wrote:

During the entire primary season, we have encountered Republican women who represented the more moderate to liberal philosophy in the Republican party. We have been successful, in most cases, in defeating those Republican women. Here is an opportunity for TRIAD clients to play a leading role in helping elect a conservative woman to show that conservative women have a better chance of winning than liberal women.¹⁴¹

In a two-week period, Triad spent \$111,000 for Wittig -- not much less than the \$141,000 the Wittig campaign itself spent in the same period.¹⁴²

These advertisements were the functional equivalent of campaign ads. The ads were run in specific districts. Faxes sent by Triad indicate that the timing of the ads was carefully planned for when advertising was likely to have its greatest impact on voters.¹⁴³ The advertisements seldom if ever dealt with “issues” but were instead attacks motivated by partisan intent. Asked about the ads run by Citizens for Reform attacking Democratic candidate Yellowtail, Peter Flaherty of Citizens for Reform reportedly stated: “If more wife beaters are out there as public figures, we are going to expose them, and they better watch out.”¹⁴⁴ Asked whether his group

would attack any Republican wife beaters who might turn up, Flaherty said “Its not up to us to do the job of people who have a liberal ideology.”¹⁴⁵ Even Lyn Nofziger, spokesperson for Citizens for the Republic, has said that it is “outrageous” that groups like this can “go and run political ads and call them educational.”¹⁴⁶

Given the level of coordination with the campaigns and the content of the ads, Triad’s advertising expenditures constituted disguised contributions to the candidates. Triad collaborated with campaigns to determine what issues and strategies would most benefit the candidates. Because Rodriguez was among those refusing to answer questions at his deposition, the Committee was not able to expand on the documentary evidence concerning the extent to which the advertising campaign was discussed with the campaigns and candidates. While campaigns may not have been familiar with the names Citizens for Reform and Citizens for the Republic when the Triad-managed advertising appeared in their districts, it seems highly unlikely that neither candidates nor campaigns ever anticipated or discussed potential advertising campaigns in the course of consultations with Rodriguez.

No Comparison Between Triad and the AFL-CIO

Malenick has repeatedly asserted that Triad -- through Citizens for Reform and Citizens for the Republic -- was simply trying to respond to the issue advertising effort launched by the AFL-CIO in March 1995. However, the advertising aired by Triad rarely mentioned labor as an issue. Further, the majority of races where Triad aired advertising were not in districts where the AFL-CIO was active. In fact, of 26 House races in which Triad advertised, only ten were targets of the AFL-CIO. Triad also spent over \$800,000 on advertising in three Senate races even though the AFL-CIO was not active in any Senate race. Of the six House races where Triad spent over \$100,000 on advertising, the AFL-CIO was active in only one district. The evidence suggests that two criteria that appear to have determined where Triad ran advertising were whether a conservative Republican candidate was running in the district and whether one of Triad’s contributors wanted advertising aired in that particular district.

Additionally, while Triad ran a covert advertising campaign through unknown groups funded by secret contributors, the AFL-CIO campaign was publicly announced in 1995 along with the 25 freshman House races the AFL-CIO intended to target. Unlike Triad, the AFL-CIO is a bona-fide membership organization whose member unions are backed by millions of American workers, most of whom support the labor federation’s public policy positions. Hence, advertising paid for by unions is an open and legal attempt to promote the interests and views of union members. In contrast, Triad received funds from people who went to extraordinary lengths to conceal their identity and purpose from voters.

Financing the Advertising Campaign

When the Minority began the Committee’s investigation into Triad Management, it already suspected that Robert Cone was a major source of Triad financing. Press reports had linked him to Malenick and had noted Cone’s increased financial involvement with political

organizations.¹⁴⁷ As the Committee's investigation progressed, it became increasingly clear that whoever was funding Triad and the shell companies was also playing a role in determining the content and the location of advertising prepared by Triad. The investigation clearly showed that Triad and both Citizens for Reform and Citizens for the Republic were largely financed by a single backer, and that neither Citizens for the Republic nor Citizens for Reform had done anything other than create and air advertising with direction from that backer.

As the Minority became more convinced that understanding the role of Triad's backers was essential to the investigation, resistance from several quarters to the investigation began to build. Nevertheless, in August, the members of the Committee agreed that an in camera review of the funding sources of Triad was warranted.¹⁴⁸ On August 20, the Committee also issued a bank subpoena requiring production of financial records of Triad, Citizens for Reform and Citizens for the Republic. The subpoena permitted the attorneys for the parties only to redact certain depositor information from the records produced to the Committee.¹⁴⁹ Informed of the decision to perform an in camera review of Triad's records, and the issuance of the bank subpoena, on September 8 attorneys for Triad notified the Committee that they would not submit to an in camera review and would not produce subpoenaed witnesses for depositions.¹⁵⁰

On August 21, attorneys for Triad were notified of the bank subpoena, provided a copy of the subpoena, and informed that records needed to be produced to the Committee within two weeks.¹⁵¹ The Committee subpoena stated that the bank holding the records "shall permit" representatives of the organizations to make redactions, and that representatives of the organization "may" remove certain information from the records.¹⁵²

In early September, records including account statements and expenditure records were produced to the Committee by the bank. The bank records for Triad, Citizens for Reform, and Citizens for the Republic showed that:

- O Citizens for the Republic was entirely financed by Triad from its creation through September 1996;
- O Citizens for Reform had no bank account until less than one month prior to the 1996 election;
- O both nonprofit organizations received fewer than a dozen deposits of large amounts of money;
- O between \$1 million and \$2 million dollars passed through the accounts of both Citizens for Reform and Citizens for the Republic in the weeks around the 1996 election, while the accounts were virtually inactive in other months; and
- O money was freely transferred among the three entities.

However, in its September production, the bank did not provide the account deposit records for any of the organizations under subpoena. On September 30, six weeks after the bank subpoena was served, Minority Chief Counsel sent an inquiry to the bank holding Triad's records, noting that these records had not been produced and requesting production. The letter specifically noted that the subpoena required that attorneys for the account holders be offered the opportunity to redact information. Two weeks later, the Committee received from the bank unredacted account deposit records identifying contributors to Triad, Citizens for Reform and Citizens for the Republic.¹⁵³ The records had been sent without redactions, presumably because the bank had determined that it had provided Triad's attorneys with sufficient opportunities to redact the records during the eight weeks between service of the subpoena and production.¹⁵⁴ At the same time, attorneys for Coalition for Our Children's Future, who had been similarly notified of issuance of an identical subpoena for the bank records of their client, produced records which redacted the identity of depositors to the account as permitted by the subpoena.

It is unclear why Triad's attorneys failed to exercise their option to redact their client's records, leading to the production of records identifying contributors. The circumstances of the production and the history of Triad's non-cooperation with the Committee support the inference that Triad's counsel declined to take steps to redact the subpoenaed bank records based on the incorrect assumption that the bank would not produce the unredacted records. Seen in this light, the failure of Triad's counsel to redact the records was consistent with a general course of conduct in seeking to obstruct the Committee's investigation of Triad's activities. When Triad attorney Mark Braden learned that the bank had produced the records without redactions, he demanded the immediate return of the records. Braden offered no explanation of why he did not exercise his option to redact the documents. He not only failed to redact the documents by the September 2 deadline, but also failed to redact them at any point in the six weeks prior to the October 16 production by the bank. The Minority retained its copy of the documents because, as Senator Glenn has explained, the records are relevant to the investigation and were properly received pursuant to a valid Committee subpoena.¹⁵⁵

The Trusts Behind Triad

When the Committee received the unredacted documents identifying contributors to Triad and the shell companies, it became clear why Triad and its attorneys had been so anxious to prevent the records from coming to light. The documents contain further proof that Triad was used as a tool to evade the contribution limits and disclosure provisions of the campaign finance laws. Most notably, the bank records revealed that yet another layer of dummy organizations existed behind Triad. Two secret trusts together contributed \$2.34 million to Citizens for Reform and Citizens for the Republic, over 83 percent of the total money received by the organizations. The trusts appear to have given the funds with the specific intent that the trusts' existence never come to light. In fact, Triad's attorneys have publicly confirmed that Triad entered into written agreements to keep the identity of funding sources secret.¹⁵⁶

The first trust, identified in bank records only as "Personal Trust," contributed \$600,000 to Citizens for Reform and Citizens for the Republic from an account at CoreStates Bank in

Philadelphia.¹⁵⁷ Based on the testimony of Triad bookkeeper Evans that Triad's backer provided hundreds of thousands of dollars to the two nonprofits, the Minority believes that the Personal Trust is, in all probability, controlled by Robert Cone. The trust's account is at the same bank where Robert Cone's brother Edward, who also contributed \$300,000 to Citizens for the Republic and \$100,000 to Citizens for Reform, has a personal account, and the wire transfers from the Personal Trust to Citizens for Reform and Citizens for the Republic began at the same time that Robert Cone stopped making contributions to Triad from his personal account. The only public statement Robert Cone has ever made on the subject of Triad is, "I'm not confirming or denying anything at the moment."¹⁵⁸

Economic Education Trust

Still unresolved by the Committee is the identity of the backer or backers of the Economic Education Trust. This Trust provided \$1.79 million to the Triad nonprofits in October 1996. Evidence suggests that these funds were given to Triad's two nonprofits with the contingency that the trust's own consultant oversee the advertising campaign, including selection of where ads would air. Even without the benefit of a subpoena for the financial records of the Economic Education Trust, circumstantial evidence developed by the Minority suggests that the trust was financed in whole or in part by Charles and David Koch of Wichita, Kansas. The Koch brothers control Koch Industries, an oil company with revenues of about \$30 billion per year. It is believed to be the second-largest privately-held company in the United States. The Committee's evidence of the Koch brothers' involvement includes:

- O Many of the candidates who benefitted from attack ads run by Triad also received campaign contributions from Charles Koch, David Koch, and/or their company's political action committee.¹⁵⁹
- O The Koch brothers have a history of channeling money through nonprofit organizations in order to advance their political interests, including think tanks and term-limits groups.¹⁶⁰ In 1996, a term-limits group with possible Koch funding ran attack ads under the guise of "issue advocacy" (See Chapter 15). Some of the candidates attacked by the term-limits group were also targeted by Triad.¹⁶¹
- O A disproportionate amount of the money spent on the attack ads by Triad and by a second group, Coalition for Our Children's Future, benefitted candidates in states where Koch Industries does significant business, most notably Kansas, where the company is headquartered; Minnesota, where Koch Industries owns a major oil refinery; and Arkansas, Louisiana, and Oklahoma, where Koch Industries has refineries and pipelines.¹⁶²
- O Koch Industries gave at least \$2,000 directly to Triad in October 1996.¹⁶³

Koch Industries has refused to say whether it funded the Triad-controlled tax-exempts or any other organizations that ran attack ads in 1996. A September 30, 1997, letter to Koch

Industries Chairman Charles Koch from the Committee's Minority Chief Counsel, produced no response.¹⁶⁴ Questions from journalists have been met with "no comment." After the Minority learned of the existence of the Economic Education Trust, Senator Glenn, the ranking Minority member, asked Chairman Thompson to issue a subpoena to the Riggs National Bank of Washington, D.C., where the Trust maintained the account from which money was wired to the Triad organizations. On November 24, Senator Glenn renewed his request for issuance of the subpoena. No subpoena was issued.

Whoever is behind the trust played an active role in the crafting of the Triad advertising campaign, as well as advertising aired through other organizations. Evidence strongly suggests that the trust was also the "secret contributor" that required a confidentiality agreement from Coalition for Our Children's Future, a nonprofit group that also ran ads attacking Democrats (see Chapter 13).

The trust appears to have hired its own vendors to handle its advertising campaigns. Documents produced by Triad show that Triad's eight most heavily-funded races were handled by a New York-based consultant named Dick Dresner, of the political consulting firm Dresner Wickers & Associates. The amount contributed to the Triad groups by the Economic Education Trust roughly corresponds to the amount spent on the production and airing of the eight projects overseen by Dresner.¹⁶⁵ Documents produced to the Committee indicate that Dresner was not retained by Triad, but by a major contributor who controlled the Dresner portion of the advertising. The evidence includes:

- O An October 22 memorandum from Malenick to Dresner stating, "the market buys that are being handled by Dresner Wickers & Associates were pre-determined before TRIAD was contracted to oversee the projects end."¹⁶⁶
- O An October 24 memorandum from Triad administrator Kathleen McCann to Peter Flaherty noting that "based on a client's request, additional vendors have been used to run ads through Citizens for Reform in . . . [the 1st, 2nd, and 3rd districts of Kansas and Montana at large];"¹⁶⁷
- O An October 28 memorandum from Triad bookkeeper Anna Evans to Dick Dresner's assistant Joanne Banks noting, "After my conversation with you this morning, I spoke with **[redacted]**. He has requested that to get the media time bought, to separate the media time amounts from production and retainer and other costs. Carolyn and Mr. Braden have agreed to this;"¹⁶⁸
- O A January 21 memorandum from Evans to Banks stating, "Has Mr. Dresner never informed you of his agreement of a 12% and not 15% commission that he made directly with Triad's client, who preferred using DW&A as a vendor. Let me assure you that this arrangement of vendor selection was an exception, and plans do not call for a repeat;"¹⁶⁹ and

- O A February 7 memorandum from Evans to Banks stating, “The commission taken based on these affidavits is at 15% instead of the originally agreed 12%. The agreement was requested by CFTR and agreed upon by DW&A through an intermediary.”¹⁷⁰

Dresner, Malenick, and Braden all either refused to appear for deposition or to answer questions. The Committee’s understanding of the arrangements is, therefore, less than complete. However, Dresner also played a role in advertising prepared for Coalition for Our Children’s Future (“CCF”). On September 18, 1997, the Committee deposed Denis Calabrese, a political consultant who oversaw the CCF ad campaign. Calabrese testified that in mid-1996, he was retained by an individual he refused to name, who was a representative for an organization he refused to name, for the purpose of overseeing an issue advertising campaign consisting of political advertisements.¹⁷¹ Calabrese testified that as part of his duties he hired a number of other political consultants to act as vendors including Dresner, and Dresner’s Triad subcontractors James Farwell and Steve Sandler.¹⁷² He testified that he initially met Dresner at a meeting with the anonymous donor representative and that he attended meetings with a variety of organizations, including CCF and Triad, in order to determine if they were “appropriate vehicles” for the issue ad campaign.¹⁷³ He also testified he oversaw a second ad campaign for the anonymous donor through another organization which was not Triad.¹⁷⁴

Although he failed to appear for a sworn deposition, in a January 1998 roundtable discussion, Dick Dresner admitted that he helped to coordinate a number of issue advertising campaigns in the 1996 election cycle. Dresner said that “many of the people he worked with were most concerned with remaining anonymous, while still having a major impact on federal elections.”¹⁷⁵ Dresner confirmed that “his wealthy clients set up a series of foundations, trusts and other ‘shells’ to pump money into subterranean issue-ad campaigns. ‘They use three or four or five or six different ways so they aren’t discovered.’”¹⁷⁶ He went on to note that “his clients seemed to have success with that tactic, and most have remained anonymous even now: ‘Even if their names came up once or twice, the extent of their activities is underestimated.’”¹⁷⁷

Other evidence besides the involvement of the same consultants suggests that the donor behind the Economic Education Trust whose identity has been concealed from the Committee funded not only the Triad advertising campaign but also the CCF advertising campaign. In addition:

- O Both Triad and CCF representatives confirmed that both organizations executed written confidentiality agreements with a secret contributor.¹⁷⁸
- O An unnamed former employee of CCF stated in a news article that the entity that funded the CCF advertising campaign was a trust.¹⁷⁹
- O The funds for the CCF ad campaign were wired from an account at Riggs Bank in Washington, D.C., the same bank where the Economic Education Trust has an account.¹⁸⁰

- O Barry Bennett, executive director of CCF stated that the confidentiality agreement was drafted by former RNC General Counsel Benjamin Ginsberg. Ginsberg was also consulted on the substance of CCF advertising, and represents both Dick Dresner and James Farwell, both of whom failed to appear for deposition on any of the numerous dates offered to them.¹⁸¹

Triad's Impact on the 1996 Elections

While it is impossible to know the full extent of the Economic Education Trust's advertising campaign absent a full investigation, the election results in Kansas (the home state of the Koch brothers) suggest that Dresner was correct in noting that his clients had been successful in their attempts to covertly influence the outcome of particular federal races. Triad advertising aired in four of six federal races in Kansas. Two were for open House seats, the third was held by a vulnerable freshman Republican, and the fourth was an open Senate seat in which a bitter and disruptive Republican primary battle had been waged.

Using television advertising, mailings, telephone calls, and radio ads all prepared under the supervision of Dick Dresner, Triad spent over \$1 million on the four races: \$420,000 in television advertising in the Senate race between Republican Representative Sam Brownback and Democrat Jill Docking; \$287,000 on television and radio advertising and phone calls in the race between Republican Vince Snowbarger and Democrat Judy Hancock; \$131,000 on phones, mail, and television advertising benefitting freshman Republican Representative Todd Tiahrt in his campaign against Randy Rathbun; and \$133,000 on television, radio, phones, and mail in the race between Republican Jim Ryun and Democrat John Freidan.¹⁸² Triad's two-week spending spree on behalf of the Republican Senate candidate totaled almost a quarter of the amount the candidate spent on his own campaign throughout 1996.¹⁸³ Triad's two weeks of spending on behalf of Vince Snowbarger totaled over half of what he himself spent in 1996.¹⁸⁴ Republican candidates were victorious in all four races. Representative Tiahrt was re-elected by a margin of less than two percentage points. Vince Snowbarger and Jim Ryun were elected by margins of less than five points.¹⁸⁵

Advertising by Other Triad Contributors

Although the multimillion-dollar advertising campaigns appear to have been funded largely by Cone and the Koch families, the Committee also found evidence that smaller contributors made contributions with the intent of financing advertising campaigns that targeted specific candidates. For example, California agribusinessman Dan Gerawan contributed \$50,000 to Citizens for Reform. In the primary, Gerawan had funded a publicly disclosed advertising campaign attacking one of the candidates in the 20th Congressional District in California for supporting the Legal Services Corporation, a government-funded agency that provides legal services to the indigent. In the general election, Citizens for Reform aired an advertisement attacking Representative Calvin Dooley's views on the Legal Services Corporation.¹⁸⁶ After the election, Gerawan admitted he paid for the ads.¹⁸⁷ Although the Minority requested a subpoena for Gerawan's deposition, no subpoena was ever issued.

The Committee also found evidence suggesting a direct link between a Triad-sponsored advertising campaign and eight checks totaling \$11,500 received by Citizens for Reform on a single day in October 1996. The checks, among the lowest contributions received by either nonprofit, all came from people or businesses based in the 6th District of Pennsylvania, where Republican Christian Leinbach was challenging Representative Tim Holden.¹⁸⁸ Seven of the eight families who contributed to Triad had already made the maximum permissible contribution to Leinbach's campaign.¹⁸⁹ On September 11, Carlos Rodriguez had written a report of the Leinbach campaign complaining: "the problems with the campaign became obvious once I visited the campaign headquarters. Leinbach has been unwilling to make the fund raising calls necessary. . . . We should wait for marked improvements on the part of the candidate and the consultant before providing them with any financial assistance."¹⁹⁰ Yet less than a month later, Citizens for Reform funded a \$17,000 radio campaign against Leinbach's opponent.¹⁹¹ Presumably, the funds received from Leinbach's supporters were used to pay for advertising in a campaign to which Triad consultants were unwilling to devote existing resources.

CONCLUSION

In the end, Triad succeeded in pouring millions of dollars into televised advertisements designed to attack particular candidates in hotly-contested races, while concealing the identities of the individuals and companies that provided the monies. Triad's secrecy about its sources of funding, which is one of the principal benefits it offers its contributors, was accomplished through several means, including its disingenuous incorporation as a for-profit business and the establishment of sham nonprofit corporations. This secretiveness undermines our system of campaign-finance laws. If, as the Minority strongly believes, Triad violated campaign-finance laws, it has done so with impunity. If, as Triad contends, its activities fell within the limits of the law, then the disclosure requirements of the campaign-finance laws have proven to be so easily circumvented by individuals with wealth that they are essentially meaningless. Triad is important not just for the ways it bent or broke existing laws, but for the pattern it has established for future groups, which will take comfort in Triad's successful defiance of this Committee.

1. Buckley v. Valeo, 426 U.S. 1, 9 (1976).
2. Roll Call, 12/4/97.
3. Roll Call, 12/4/97: Austin-American Statesman, 8/16/95.
4. Roll Call, 12/4/97: U.S. News and World Report, 6/6/94.
5. Roll Call, 12/4/97.
6. See Council for National Policy Unofficial Information Page, <http://apocalypse.berkshire.net/~ifas/cnp/index/html>.
7. Roll Call, 12/4/97.
8. National Journal, 9/28/96.
9. Triad records of incorporation TR1 1-5: Anna Evans deposition, 8/19/97, p. 20.
10. The Hill, 10/8/97.
11. Roll Call, 12/4/97.
12. Memorandum from Carolyn Malenick to Triad employees, 2/22/97, TR 20 5.
13. Washington Post, 3/9/97.
14. Committee subpoenas 247-257 for: Cleta Mitchell, Lyn Nofziger, Carlos Rodriguez, David Gilliard, Padraic Buckley, Kenneth Boehm, Peter Flaherty, Meredith O'Rourke, Carolyn Malenick, Mark Braden, Anna Evans. See also subpoena number 346 for Kathleen McCann, 375 for Richard Dresner, and 377 for James Farwell.
15. Letter from Richard Hauser to Majority Chief Counsel and Minority Chief Counsel, 9/8/97. Those deposed at that point were Peter Flaherty and Anna Evans. The deposition of Meredith O'Rourke had been adjourned but not completed. Two other directors of Citizens for Reform, Kenneth Boehm and Padraic Buckley, had also been deposed to establish they had almost no role in the organization.
16. Letter from Richard Hauser to Committee staff, 9/8/97.
17. See 18 U.S.C. sections 1503, 1505.
18. Carolyn Malenick deposition, 9/16/97.

19. Three subpoenas for deposition for individuals involved in the AFL-CIO advertising campaign were issued in September but never taken. Contrary to public statements, these individuals only refused to appear on the date contained in the subpoena because they were given short notice and had conflicts. The Majority staff never contacted these individuals to reschedule deposition dates. See Committee subpoenas 399-401; letter to Committee staff from counsel for the AFL-CIO, 9/22/97. Another individual affiliated with the AFL-CIO did appear pursuant to a deposition subpoena. Deposition of Geoffrey Garin, 9/5/97. See Chapter 39 of this Minority Report.

20. Associated Press, 11/4/97.

21. The only invoices produced were for “fees” Triad charged the shell companies, Citizens for Reform and Citizens for the Republic. TR 8 26, CR 13 1956.

22. Meredith O’Rourke deposition, 9/3/97, pp. 30-33.

23. Meredith O’Rourke deposition, 9/3/97, pp. 30-33.

24. Anna Evans deposition, 8/19/97, pp. 45-46.

25. Staff interviews with PAC contributors, 5/97.

26. Staff interviews with PAC contributors, 5/97.

27. Staff interviews with PAC contributors, 5/97.

28. Anna Evans deposition, 8/19/97, p. 175.

29. Bank statements of Crestar account of Triad Management, 5/31/95 - 1/31/96.

30. Deposit records of Crestar bank account of Triad Management.

31. Deposit records of Crestar bank account of Triad Management.

32. See financial records of Crestar account of Triad Management.

33. See financial records of Crestar accounts of Triad Management and Triad Management, Inc.

34. Anna Evans deposition, 8/19/97, p. 177.

35. Morning Call, 10/3/93.

36. Boston Globe, 8/23/96.

37. Morning Call, 10/3/93.

38. National Journal, 9/28/96.

39. James McLaughlin deposition, 9/17/97, p.16.
40. See 2 U.S.C. sections 433 and 434.
41. See 2 U.S.C. section 441 (a)(3); see also FEC public disclosure records for federal contributions of Robert Cone. Contribution records are available at www.tray.com.
42. See 2 U.S.C. sections 433 and 434.
43. 2 U.S.C. section 441b.
44. 11 C.F.R. section 116.1 (a)(c).
45. Meredith O'Rourke deposition, 9/3/97, p. 53; staff interview with Robert Riley, Jr., 9/16/97; Rapid City Journal, 9/20/97.
46. Meredith O'Rourke deposition, 9/3/97, pp. 46, 50.
47. Staff interview with Robert Riley, Jr., 9/16/97.
48. Rapid City Journal, 9/20/97.
49. Los Angeles Times, 11/12/97.
50. Triad invoices, TR 8 35; TR 8 112-114.
51. See Rodriguez reports identified in footnotes 52-58, *infra*.
52. Minneapolis Star Tribune, 10/29/97.
53. Report of Jay Mathis campaign, TR 15 1170-1172.
54. Report of Vince Snowbarger campaign, TR 15 1206-1207.
55. Report of Christian Leinbach campaign, TR 15 1163-1166.
56. Report of Jim Ryun campaign, TR 15 1197-1199.
57. James McLaughlin deposition, 9/17/97, pp. 13-14.
58. Report of Steve Stockman campaign, TR 15 1210-1212.
59. Report of Mark Sharpe campaign, TR 15 1186-1188.
60. Meredith O'Rourke deposition, 9/3/97, p. 95.

61. "My understanding of what happened is Meredith [O'Rourke] asked Carolyn [Malenick] whether she could go over and help [the Senate candidate] dial for dollars." Washington Post, 12/12/97; "O'Rourke was simply doing a favor for Brownback, not on Triad's time." Kansas City Star, 12/5/97.
62. Meredith O'Rourke, deposition, 9/3/97, pp. 94-95.
63. Triad solicitation TR 10 146-147: Rapid City Journal, 9/20/97.
64. Triad 10 0079-10 0081.
65. "'96 Primary Alert" Triad Fax Alert 7/18/97, TR 10 218.
66. Massachusetts Citizens for Life v. FEC, 479 U.S. 238 (1986), Faucher v. FEC, 928 F. 2d 468 (1st Cir. 1991), Maine Right to Life v. FEC, 98 F. 3d 1 (1st Cir. 1997), 11 C.F.R. section 114.4.
67. Triad "fax alert," 10/10/96, TR 10 160-161.
68. Triad fax solicitation, TR 10 146-147.
69. Federal election law severely limits the volunteer activities that corporations may engage in, and limits the group of people that corporations may solicit for contributions to political campaigns to a restricted class of officers and executive employees. In a corporation like Triad the restricted class Triad could properly solicit would consist only of Carolyn Malenick herself. See 11 C.F.R. section 114.2 (f); 114.1(e)(2).
70. 2 U.S.C. section 441a(a)(8): 11 C.F.R. section 110.6.
71. Triad internal PAC list, TR 15 105-1052.
72. FEC public disclosure reports of: Robert Riley, Jr., Conservative Campaign Fund, Americans For Free Enterprise, Citizens Allied for Free Enterprise, and Faith, Family, and Freedom. See also Wall Street Journal, 4/10/97.
73. Triad "fax alert," 11/14/96, TR 10 83.
74. Kansas City Star, 5/2/97: FEC Public Disclosure records of John and Ruth Stauffer.
75. Handwritten note to Triad, TR 15 678.
76. Meredith O'Rourke deposition, 9/9/97, pp. 60-77.
77. Peter Flaherty deposition, 8/22/97, p. 13.
78. Peter Flaherty deposition, 8/22/97, pp. 11, 15.

79. Citizens for the Republic Education Fund Unanimous Consent in Lieu of Meeting, CREF 1 4-8.
80. Triad invoices from Gilliard and Associates, CREF 13 1934.
81. James McLaughlin deposition, 9/17/97, p. 13: records of incorporation for Huckaby, Rodriguez, Gilliard, Inc.
82. Triad internal PAC list, TR 15 1050-1052.
83. Staff interview with Robert Riley, Jr., 9/16/97.
84. Staff interview with Robert Riley, Jr., 9/16/97.
85. Meredith O'Rourke deposition, 9/9/97, pp. 66, 72.
86. Meredith O'Rourke deposition, 9/9/97, pp. 51, 53, 90.
87. Minneapolis Star Tribune, 10/29/97.
88. Report of Pete Sessions campaign, TR 15 1176.
89. Report of Ed Merritt campaign, TR 15 1183-1185.
90. Memo from Meredith O'Rourke to Mark Braden, 6/13/96, TR 15 1054.
91. Memo from Meredith O'Rourke to Mark Braden, 6/13/96, TR 15 1054.
92. Report of Rick Hill campaign, TR 15 1143-1145.
93. In addition to acting as administrator of the PAC and director of Citizens for the Republic, Gilliard was also a paid consultant of California candidate Linda Wilde. Wilde benefitted from \$100,000 in mailings and \$25,000 in phone calls against Representative George Brown funded by Citizens for Reform, over half the amount Wilde spent on her own campaign throughout 1996. Wilde also received \$6,000 of \$21,000 raised by Citizens Allied for Free Enterprise ("CAFE"). No other candidate received more than \$1,000. See FEC disclosure reports of CAFE. In addition to working directly for Wilde, the PAC and Citizens for the Republic, Gilliard was also a paid vendor of Citizens for the Republic, and produced at least \$75,000 worth of mailings in Representative Randy Tate's Washington district.
94. Disclosure reports for Citizens Allied for Free Enterprise; see also <http://apocalypse.berkshire.net/~ifas/cnp/index.html>.
95. FEC public disclosure records of Richard Eckburg, available at www.tray.com.

96. FEC disclosure records of Foster Freiss and the Conservative Campaign Fund available at www.tray.com: deposit records of Citizens for Reform.
97. FEC disclosure records of Peter Cloeren available at www.tray.com; bank deposit records of Citizens for Reform.
98. FEC disclosure records of Lorena Jaeb and Citizens United available at www.tray.com.
99. Meredith O'Rourke deposition, 9/3/97, p. 102.
100. Peter Flaherty deposition, 8/22/97, p. 13.
101. Kansas City Star, 5/5/97: Meredith O'Rourke deposition, 9/3/97, pp. 91-92.
102. Meredith O'Rourke deposition, 9/3/97, pp. 99-100.
103. Carolyn Malenick deposition, 9/16/97, p. 20.
104. A disclaimer such as that contained in letters from Triad to the PACs does not negate fact. Massachusetts Citizens for Life, 479 U.S. 238, 249 (1986).
105. Committee list of races where Citizens for Reform and Citizens for the Republic were active and the amounts spent.
106. Faucher v. FEC, 928 F. 2d 468 (1st Cir. 1991); 743 F. Supp 64 (1990); FEC v. Christian Action Network, 92 F.3d 1178 (4th Cir. 1996), 894 F. Supp 946 (S.D.Va. 1995); Maine Right to Life v. FEC, 98 F.3d 1 (1st Cir. 1997).
107. Clifton v. FEC, 114 F.3d 1309 (1st Cir. 1997); see also Chapter 20: Legal Analysis and Overview.
108. Annenberg Public Policy Center, "Issue Advocacy Advertising During the 1996 Campaign: A Catalog," Report Series No. 16, 9/16/97, p. 7.
109. Certificate of Incorporation for Citizens for the Republic, CREF 1 32: Articles of Incorporation for Citizens for Reform, CR 1 61-64.
110. Citizens for the Republic marketing brochure, CREF 1 100.
111. Citizens for Reform stated in its application for (c)(4) status that it had not spent and did not plan to "spend any money attempting to influence" an election. IRS Form 1024, item 15, 6/7/96. This may be a false statement in violation of 26 U.S.C. §7206.
112. Roll Call, 10/20/97.
113. Peter Flaherty deposition, 8/22/97, pp. 19-21.

114. Incorporation documents of Citizens for the Republic, CREF 1 13-14, 33-35.
115. The Citizens for the Republic bank account received \$ 302,548 in deposits in July and spent \$ 273,114. All the deposits into the account were made by transfer from Triad's account at the same bank. See bank records of Crestar accounts held by Citizens for the Republic and Triad Management, Inc.
116. For example, Evans would generate an invoice for "management fees due to Triad from either Citizens for Reform or Citizens for the Republic." The invoices (the only ones Triad ever seems to have issued) are printed on Triad letterhead, are addressed to the respective groups in care of Triad, then seek payment made to Triad -- all at the same address. To actually pay Triad's bill, Evans would simply make a bank transfer from one account to another. Invoices from Triad to Citizens for Reform and Citizens for the Republic, TR 8 26, TR 8 22.
117. Consulting agreements between Triad and Citizens for Reform and Citizens for the Republic, CREF 1 94-95; CR 1 38-39.
118. October and November 1996 bank statements of Citizens for Reform.
119. October and November 1996 bank statements of Citizens for Reform.
120. October and November 1996 bank statements of Crestar bank accounts of Citizens for the Republic.
121. See note 113 *infra*; see also bank statements of Citizens for Reform and Citizens for the Republic for October and November 1996.
122. December 1996 bank statement of Crestar Bank accounts of Citizens for the Republic.
123. Los Angeles Times, 5/5/97.
124. Documents bearing signature of Lyn Nofziger, CREF 1 56, 66, 94-95.
125. Peter Flaherty deposition, 8/22/97, pp. 54, 62, 70, 83.
126. Committee list of races where Triad was active.
127. Meredith O'Rourke deposition, 9/3/97, pp. 46, 87; See Appendix C for reports of Rodriguez visits.
128. Clifton v. FEC, 114 F.3d at 1309, 1316-19 (1st Cir. 1997).
129. Report of Rick Hill campaign, TR 15 1143-1145.
130. Report of Rick Hill campaign, TR 15 1143-1145.

131. Invoice for Yellowtail advertising, CR 13 1179.
132. Script of Yellowtail advertisement, CR 13 0713.
133. Congressional Quarterly 1996 Election Results: report of Rick Hill campaign, TR 15 1143-1145.
134. Report of John Thune campaign, TR 15 1141-1142.
135. Report of John Thune campaign, TR 15 1141-1142.
136. Invoice showing funds spent for Thune by Citizens for the Republic, CREF 13 0512.
137. Report of Steve Stockman campaign, TR 15 1210-1212.
138. Invoices showing funds spent by Citizens for Reform and Citizens for the Republic, CREF 13 512, CR 13 1272.
139. Videotape advertisement produced by Citizens for the Republic.
140. Invoice showing funds spent for Wittig race, CR 13 12792.
141. Report of Sue Wittig campaign, TR 15 1136-1139.
142. FEC disclosure reports of Friends of Sue Wittig.
143. Triad fax alert "The Time for Battle Is Now," 9/27/97, TR 10 191.
144. Los Angeles Times, 5/5/97.
145. Los Angeles Times, 5/5/97.
146. Annenberg Public Policy Center, "Issue Advocacy Advertising During the 1996 Campaign: A Catalog," Report Series No. 16, 9/16/97, p. 5.
147. National Journal, 9/28/96; Boston Globe, 8/23/96.
148. Letter of 8/27/97 from Majority and Minority Chief Counsels to Triad Counsel Richard Hauser.
149. Subpoena of 8/21/97 to Crestar Bank.
150. Letter from Richard to Hauser to Alna Baron and Michael Madigan, 9/8/97.
151. Letter of 8/22/97 from Minority Staff Counsel to Mark Braden.
152. Subpoena of 8/21/97 to Crestar Bank

153. Staff also followed up with the bank holding the Triad records leaving two voice mail messages seeking to determine when records would be produced. At the same time, the bank holding records of Coalition for Our Children's Future, which had received an identical subpoena for records that had not yet been produced, was contacted for the same purpose. Letter from Minority Chief Counsel to Crestar General Counsel John Clark, 10/30/97.
154. Committee staff reviewed such records when they were received. Documents revealed the existence of a second account held by Triad which was clearly covered in the subpoena. Records for this account were also requested and were forwarded without redactions.
155. Letter of 11/24/97 from Senator Glenn to Senator Thompson.
156. New York Times, 10/24/97.
157. Wire transfer receipts of Crestar Bank accounts of Citizens for Reform and Citizens for the Republic.
158. Associated Press, 10/29/97.
159. FEC public disclosure records for Charles Koch, David Koch and Koch Industries PAC.
160. National Journal 5/16/97: Lewis Charles and the Center for Public Integrity, The Buying of the President. New York: Avon Books, 1996, p. 127.
161. Roll Call 1/26/98.
162. Wichita Business Journal 10/24/97: Minneapolis Star Tribune, 10/29/97.
163. Deposit records of Crestar account of Triad Management, Inc., 10/29/96.
164. 9/30/97 Letter from Minority Chief Counsel to Charles Koch.
165. The eight races were: Brownback v. Docking (Kansas Senate); Hutchinson v. Bryant (Arkansas Senate); Hill v. Yellowtail (Montana House); three Kansas House races: Snowbarger v. Hancock; Tiaht v. Rathbun; and Ryun v. Freidan; Brown v. Wilde (California House); and Coburn v. Johnson (Oklahoma House). Invoices for Dresner Wickers & Assoc., CR 13 1751, 1755, 1759, 1179, 1017; CREF 13 0009, 0150.
166. 10/22/96 Memo from Malenick to Dresner, CR 13 1748-49.
167. Memo from Triad staff to Peter Flaherty 10/24/96, CR 13 1659.
168. Memo from Triad bookkeeper Anna Evans to Dresner Wickers staff Joanne Banks, 10/28/96, CR 13 1780.
169. Memo from Evans to Banks, 1/21/97, CR 13 1819.

170. Memo from Evans to Banks, 2/7/9, CREF 13 0308.
171. Denis Calabrese deposition, 9/18/97, pp. 10-12.
172. Denis Calabrese deposition, 9/18/97, pp. 41-44.
173. Denis Calabrese deposition, 9/18/97, pp. 44, 18-19, 35-37, 11.
174. Denis Calabrese deposition, 9/18/97, pp. 18-19.
175. Roll Call, 2/2/98.
176. Roll Call, 2/2/98.
177. Roll Call, 2/2/98.
178. New York Times, 10/24/97: Minneapolis Star Tribune, 10/29/97.
179. Minneapolis Star Tribune, 10/29/97.
180. Wire transfer records for deposits received by Coalition for Our Children's Future, Citizens for Reform, and Citizens for the Republic.
181. Minneapolis Star Tribune, 10/29/97: Letter to Benjamin Ginsberg 11/5/97.
182. Invoices from Dresner Wickers to Triad, CREF 13 9, 150; CR 13 1017, 1735.
183. FEC disclosure report of Sam Brownback for U.S. Senate. Senator Brownback's 1996 spending totaled \$2.2. million.
184. FEC disclosure report for Snowbarger for Congress. Snowbarger's spending totaled \$443,000.
185. Congressional Quarterly, 1996 Election Results, 11/9/96 pp. 3250-57.
186. Cox News Service, 7/11/97.
187. Cox News Service, 7/11/97.
188. Deposit records of Crestar account of Citizens for Reform.
189. FEC public disclosure reports for Robert Harris, Gaspari, Gensemer, Duquette, Weaber, Doblin, available at www.tray.com.
190. Campaign Report of Christian Leinbach, TR15 1163-1166.
191. Committee list of races where Triad was active.

